IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of case

Criminal Jail Appeal No.1800/2001

Date of decision : 15.9.2004

For the approval of:-

Hon'ble Mr. Justice Irshad Hussain

Hon'ble Mr. Justice J. C. S. Rawat

- Whether the order/judgment should be sent to the reporters for reporting? Yes

- Whether the reporters be allowed to see the judgment? Yes

(J.C.S. Rawat, J.) **(Irshad Hussain, J.)**

Dated:- 15.9.2004

IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Jail Appeal No. 1800 of 2001

Gudmohan
S/o Sri Shiv Singh
R/o Village Mothudgaon
Patti Barjula, Tehsil Deoprayag
District Tehri Garhwal .....Appellant

Versus

State .....Respondent

Coram :- Hon'ble Irshad Hussain, J.
Hon'ble J. C. S. Rawat, J.

Dated :- September 15, 2004

(Per :- Hon'ble Justice J. C. S. Rawat)

This is a criminal appeal against the judgment and order dated 19.7.2000 passed by Sri K.P. Nigam, the then Sessions Judge, New Tehri Garhwal in S.T. No.5/1999, whereby the learned Sessions Judge has convicted and sentenced the appellant to undergo RI for life imprisonment under section 302 IPC.

2. Brief facts of the case are that the deceased-Smt. Sunita Devi was the wife of the appellant-Gudmohan. On 31.8.1998 at about 5AM, appellant came to his elder brother Kushal Singh (PW-2), who was living in the adjourning house and told that his wife-Sunita (deceased) had been killed by someone. Kushal Singh then asked his brother to collect the people from the village. Appellant went in the village and on his return told to his brother that Mr. Sher Singh of the same village had advised him to lodge report with the Patwari. After saying this, he left the house and thereafter could not be traced. Kushal Singh (PW-2) however lodged the written report (Ex.ka.2) with the Patwari Chowki Barjula on the same day. On the basis of written report, check FIR (Ex.ka.6) was prepared and a case was registered against the unknown person under section 302 IPC vide GD report No.32 dated 31.8.1998 (Ex.ka.7). Patwari Sri Murari Lal recorded the statement of complainant-Kushal Singh and immediately went to the village of occurrence and kept the dead body in his supervision. On 1.9.1998 he

prepared the panchayatnama (Ex.ka.8) of the dead body of the deceased and sent it for autopsy to the Civil Hospital, Tehri. He also prepared the photolash (Ex.ka.9), specimen seal (Ex.ka.10), challan lash (Ex.ka.11) and letter to Medical Officer (Ex.ka.12). He prepared site plan (Ex.ka.13) of the place of occurrence and handed over the dead body after post mortem examination to the complainant vide supurdaginama Ex.ka.14. He also took the samples of blood stained and plain earth from the place where the dead body was lying in the room. On 5.9.1998, the patwari recorded the statements of the children namely Km. Ruchi and master Tara of the appellant. The statement of Km. Ruchi and master Tara were also recorded by Nathi Singh Tomer (PW-7), SDM, Tehri under section 164 of the Code. The appellant could not be arrested till 29.11.1998. Thereafter, the investigation was handed over to Sri Magan Singh Negi (PW-9), Inspector-Incharge, P.S. Tehri on 29.11.1998 from the Patti Patwari. On 30.11.1998, he came to know that the appellant was on bail in another case and surrendered in the court after getting his bail cancelled and went to jail. Then, he took the remand of the appellant by moving the application, Ex.ka.16 dated 30.11.1998 in the court of Chief Judicial Magistrate. The investigation was taken up as usual which culminated into the submission of the charesheet against the appellant.

3. The charge under section 302 IPC was framed against the appellant. The accused denied the charge and claimed the trial.

4. In order to prove its case, the prosecution examined nine witnesses. Dr. G.S.Rawat (PW1) has conducted the postmortem of the dead body of the deceased on 2.9.1998 and found the following ante-mortem injuries on the person of deceased:-

(i) Incised wound on the left side frontal region of head, vertically placed, 10cm x 3cm x bone cut (frontal bone), 7cm above the left eyebrow, med. end. muscles, soft tissues and bone are cut in the same plain. Margins are well defined, sharp tailing present anteriorly.

(ii) Incised wound on the left lateral aspect of root of neck, obliquely placed, directed from above downwards and

medially. Margin are sharp, well defined, size 10cm x 4cm x cervical vertebra bone exposed, soft tissues, muscles, vessels and nerves are divided in the same plane. Internal carotid and internal jugular veins are cut on left side.

(iii) Incised wound on the left side supra-clavicular region to lateral third of left clavicle, placed obliquely, directed from above downwards and medially, size 9cm x 4cm x clavicle bone cut, margins sharp and well defined, 5cm medial to the top of left shoulder. Soft tissues, muscle and bone are divided in same plane.

(iv) Incised wound on medial part of front of chest, vertically placed, directed from above downwards margins are sharp and well defined, size 8 cm x 3cms x right ventricular cavity deep cutting the 3rd, 4th and 5th ribs at medial end in same plane, the wound is 11cm medial to the left nipple. Left lung is divided in an area of 5cm x 0.6cm x 1cm deep alongwith pleura in the same plane. Right ventricle and pericardium are cut in an area of 3cm x 0.6cm x cavity deep. Left thoracic cavity is filled with blood.

(v) Incised wound on the middle of the right scapular region, transversely placed, directed from medial to lateral side, size 11cm x 5cm. Right scapula bone cut, soft tissues, muscles and bones are divided in the same plane. Margins are sharp and well defined. Bune is cut an area of 9cm x 0.8cm.

(vi) Incised wound on the right side infra scapular region of right side back of chest, obliquely placed, directed from medial to laterally and downwards, size 12cm x 7cm x cutting the 8th to 10th ribs on the right side back of chest. The wound is 9 cm below the injury no.5. Margins are sharp and well defined, underlying soft tissues, muscles, vessels and bones are divided in the same plane.

In the opinion of the Medical Officer, the death was caused due to shock and haemorrhage resulting from ante-mortem injuries sustained by sharp edged fairly heavy weapon. He also proved the postmortem report Ex.ka.I.

5. Kushal Singh (PW-2) – informant who was the elder brother of the appellant lodged the written report (Ex.ka.2) with the Patwari, Barjula on 31.8.1998. Prem Singh (PW-3) went to the place of occurrence with the Patwari and the Patwari prepared panchnama in his presence. Smt. Madhu (PW-4) was the wife of elder brother of the appellant Kushal Singh (PW-2) and the Jethani of the deceased-Smt. Sunita Devi. She stated that the appellant came to her house and told her husband that Sunita has been killed by someone. She has also stated that 2 to 4 days prior to the alleged incident, the deceased told her that the appellant had threatened to kill her because she had spent the huge sum in getting him released on bail in a criminal case and he was not willing to pay the amount from whom she had borrowed the money. The deceased asked her husband (appellant) that she will pay the amount. The prosecution has also adduced the evidence of Ruchi (PW-5) and master Tara (PW-6) who were the daughter and son respectively of the deceased and the appellant. They narrated as to how their mother was killed by their father (appellant). Nathi Singh Tomer (PW-7) posted as S.D.M. Tehri recorded the statements of Km. Ruchi, Master Tara under section 164 Cr.P.C. He proved the statements of Km. Ruchi, Master Tara as Ex.ka.3 to ka.4 respectively. Murari Lal-Patwari (PW-8) who was first investigating officer of the case proved the check FIR (Ex.ka.6) and copy of G.D. Ex.ka.7. Magan Singh Negi (PW-9) was the second investigating officer of the case in pursuance of the order dated 10.11.1998 passed by the S.P., Tehri Garhwal. He stated when he came to know that the appellant is in jail after getting his bail cancelled in a different case, he took the remand of the appellant by moving the application Ex.ka.16. He submitted the chargesheet, Ex.ka.17, on completion of usual formalities of the investigation.

6. The appellant in his statement under section 313 of the Cr.P.C. denied that he killed the deceased-Sunita and he further stated that he had been falsely implicated in this case. The appellant had further stated under section 313 of the Code that the deceased–Sunita was his wife and on 30.8.1998 he was sleeping on the cot and the deceased-Sunita was sleeping alongwith the children on the floor in his house. He further

stated that Jagat Singh, Kushal Singh, Prem Singh and Chait Singh inflicted injuries to the deceased and thereby caused her death and falsely implicated him to grab his property.

7. The learned Sessions Judge on his appreciation of the evidence on record held that the prosecution had proved its case against the appellant beyond reasonable doubt and convicted and sentenced him to undergo RI for life imprisonment under section 302 IPC.

8. We have heard Sri S.K.Mishra learned Amicus Curiae and Sri Amit Bhatt learned A.G.A. We have also gone through the evidence and material on record.

9. It is not disputed that on 30/31.8.1998 in the night the appellant was sleeping in his house alongwith his family members. The appellant was sleeping in the cot and the deceased-Sunita was sleeping alongwith her children on the floor. It is also not disputed that the deceased-Sunita was murdered in the night of 30/31.8.1998. According to the prosecution, the murder was committed by the appellant. The appellant had denied that he inflicted the injuries on the deceased. The appellant had stated that Jagat Singh, Kushal Singh, Prem Singh and Chait Singh inflicted injuries to the deceased and thereby caused her death. Thus, the date and time of the occurrence is not disputed from the side of the defence.

10. It need to be mentioned here that it is not disputed that the deceased met a homicidal death on account of injuries sustained on the date of occurrence. The medical officer (PW-1) had also deposed that he conducted the postmortem of the dead body of the deceased on 2.9.1998 and also found that the death was caused due to shock and haemorrhage resulting from the ante-mortem injuries caused by the sharp edged fairly heavy weapon and the duration of the death was found two-three days at the time of postmortem examination. Thus, the death could have been caused in the early morning of 31.8.1998.

11. Now, we have to examine whether the appellant is the author of the injuries on the person of the deceased or not. The prosecution case against the appellant mainly rests upon the evidence of two child witnesses i.e. Km. Ruchi (PW-5) and master Tara (PW-6) aged about 11 years and 10 respectively. Km. Ruchi (PW-5) & master Tara (PW-6) are the daughter & son respectively of the deceased and the appellant. It is not disputed that in the night of 30/31.8.1998 when the murder was committed the appellant, deceased and children were sleeping in the same house. Km. Ruchi (PW-5) and master Tara (PW-6) had categorically stated that they were sleeping on the date of incident in the same room in which their mother (deceased) and father (appellant) were sleeping. They woke up on hearing some noise and saw the blood-stained axe in the hand of their father (appellant) and there were injuries on the neck, back and waist of their mother and the blood was oozing from the injuries. Their mother was not speaking anything. On seeing her condition they started weeping. They further claimed that they saw their father was concealing the axe behind the canisters. Their father (appellant) also threatened to cut them also if they would not stop weeping. We have scanned the testimony of both these child witnesses and found it consistent and also corroborating each other as to how their mother was murdered by their father (appellant). Both these witnesses were cross-examined at length but nothing came out in their cross examination so as to impeach their testimony. Both the witnesses had given the entire picture of occurrence in their evidence. So far as the capacity of the child witnesses to depose are concerned, not only the learned Sessions Judge before recording their evidence took the precaution of examining and finding out their capacity to depose, but their very deposition itself on a scrutiny would indicate that though they were 11 and 10 years old, yet had sufficient maturity to depose as to what they saw and we see nothing brought out in the cross examination to have an iota of doubt about their capacity to depose. In that view of the matter, we see no infirmity in their evidence being taken as the basis of conviction.

12. It is well settled law that a child witness if found competent to depose to the facts then the reliable evidence of such a witness could be

made the basis for conviction. The only precaution which the Court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but, as a rule of prudence the Court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record.

13. We have gone through the evidence of Km. Ruchi (PW-5) and master Tara (PW-6) which clearly reveals that their evidence is natural, realistic and unprompted and untutored. No minor children who had lost their mother in the incident would falsely implicate their father so as to lose him also. We are of the opinion that the testimony of both the child witnesses i.e. Km. Ruchi (PW-5) and master Tara (PW-6) was fairly reliable on the factum of incident. Thereafter, the evidence of both the child witnesses inspire confidence and is sufficient to connect the appellant with the crime as its perpetrator.

14. The evidence of both the child witnesses as indicated above also stand corroborated from the evidence of Dr. G.S.Rawat (PW-1) Medical Officer. Dr. G.S.Rawat (PW-1) has conducted the postmortem of the dead body on 2.9.1998 at 11AM and found six ante-mortem injuries on the dead body of deceased-Sunita. In the opinion of medical officer, the death was caused due to shock and haemorrhage resulting from ante-mortem injuries caused by blow of sharp edged fairly heavy weapon and the dead body was two-three days old. Thus, the time and date of occurrence is further corroborated by the medical evidence. The prosecution also produced the evidence that the appellant caused injuries on the person of the deceased by an axe which is a heavy sharp edged weapon. Thus, the weapon used in the murder is also stand corroborated by the medical evidence.

15. It is also not disputed that in the night of 30/31.8.1998 the appellant was sleeping in his house alongwith his wife-Sunita and his

children. The appellant was sleeping in the cot and the deceased-Sunita was sleeping alongwith the children on the floor. The dead body was found lying on the floor over a 'Gudda' in the room situated in the upper-storey of the house of the appellant and there was a cot by the side of this 'Gudda'. The said 'Gudda' was also stained with blood and the blood was flowing on the floor from the head and neck of the deceased. Kushal Singh (PW-2) has stated in his evidence that he saw the appellant, deceased and their children in the night before going to bed that they were inside the house. Kushal Singh (PW-2) and Smt. Madhu (PW-4) have stated in their evidence that the appellant came to their house in the early morning of 31.8.1998 and told that his wife-Sunita has been murdered by someone. Meaning thereby, the appellant, deceased and their children were in the same house. The appellant has been living in the company of the deceased since night till morning. The appellant himself told Kushal Singh (PW-2) that his wife has been murdered by someone.

16. It has been in **Mohibur Rahman Vs. State of Assam {See 2002 (6) SCC p/715, 2002 SCC (Cri) p/1496}** and **Amit Vs. State of Maharashtra {2003 SCC (Cri) p/1959}** that on account close proximity of the place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. The aforesaid principle squarely applies in the instant case and the circumstances of the case cast a heavy conviction. Here, it has been established that the death took place on 30/31.8.1998 between 3 to 5AM. However, the appellant has offered the explanation in the statement under section 313 of the Code that Jagat Singh, Kushal Singh, Prem Singh and Chait Singh inflicted injuries to his wife-Sunita and thereby caused her death. But the appellant has not explained as to how the aforesaid persons entered into the room and with which weapon they caused the injuries to the deceased. If the injuries would have been inflicted on the person of the deceased by Jagat Singh, Kushal Singh, Prem Singh and Chait Singh the appellant would have immediately reported the matter to the Patti-

Patwari. The appellant did not lodge any FIR to that effect. The prosecution has established by the evidence that the appellant informed his brother that his wife-Sunita has been killed by someone. Thereafter, the appellant went to the village on the advice of his elder brother-Kushal Singh (PW-2) to call the people from the village. The appellant then went in the village and on his return he told that he has been advised to lodge the report with the Patwari and then he left the village on the pretext that he was going to lodge the report with the Patwari but he never came back to his house. Ultimately, the appellant went to jail in another case after getting his bail cancelled. Both the child witnesses i.e. Km. Ruchi (PW-5) and master Tara (PW-6) have stated in their evidence that their father (appellant) had left the house and did not return. The Investigation Officer – Murari Lal (PW-8) had also made a thorough search of the appellant but the appellant could not be traced out by the I.O. The appellant went to jail in another case after getting his bail cancelled and his remand was taken by the second Investigating Officer Magan Singh Negi (PW-9) by moving the application Ex.ka.16. thus, the conduct of the appellant soon after the incident indicate that he absconded from the village. The fact that appellant absconded from the village is also a strong circumstance against the appellant and this piece of circumstance is a link in the chain of circumstances existing against the appellant.

17. The evidence of the prosecution with regard to the murder of the deceased-Sunita by the appellant is further strengthened by the motive preferred by the prosecution. Smt. Madhu (PW-4) who was the ‘Jethani’ of the deceased-Sunita had stated in her evidence that about two to four days prior to the incident the deceased-Sunita told her that an altercation had taken place between her and the appellant on the point of payment of the money borrowed by her for getting him released from jail. Her husband (appellant) was making allegations that he has made an excessive expenditure for the same. The deceased was insisting that she would repay the borrowed amount to the person from whom she had borrowed. It is not disputed that prior to the alleged incident the appellant was in the jail and the deceased was doing parivi to have him released on bail. Smt. Madhu (PW-4) has further stated in her evidence

that the deceased told her that the appellant threatened to kill her. The prosecution evidence reveal that the appellant had an intention to kill his wife-deceased. Besides this, from the evidence of Magan Singh Negi (PW-9) it is also evident that the appellant was suspicious about the character of his wife. In the instant case, the evidence of motive thus further fortifies the prosecution case.

18. The FIR was lodged on 31.8.1998 at about 5AM with the Patt-Patwari, Barjula by Murari Lal (PW-8). The suggestion was made on behalf of the appellant that the FIR was belated as it was lodged after a laps of 12 hours of the incident. The police station is 4KM away from the place of incident. Kushal Singh (PW-2) had stated in his evidence that when the appellant did not return to his house and the appellant could not be traced out then he went to the headquarter of the Patt-Patwari. The Patwari was not available at his headquarter and he came to know that the Patwari had gone to Dugadda. Then, Kushal Singh (PW-2) went to Dugadda and met Patti Patwari and lodged the report. This fact cannot be lost sight that the incident had taken place in hilly area. There is no regular police station where the report could be lodged. In order to lodge the report, the reporter of the crime has to trace out the Patwari of the area who moves from one place to another place. Not only this, the means of transport and communication in the hilly areas are not fast and swift as are in the plains. Mostly, one has to commute on circular routes on foot and it is difficult to cover the distance in the night. The life in hills generally is dull and slow and no body appears to be in hurry. The FIR in the instant case cannot be tested from the view point of such report as is required in the plains. In these circumstances, we do not attach any significance to the fact that the report of the case got to be lodged after 12 hours.

19. The learned Amicus Curiae has submitted that the deceased-Sunita was killed by Jagat Singh, Kushal Singh, Prem Singh and Chait Singh and further submitted that the appellant was falsely implicated in order to grab his property. The learned A.G.A. refuted the contention. The learned Sessions Judge has rightly rejected the contention by holding that Kushal Singh (PW-2) lodged the report against the

unknown person on receiving information from the appellant. If there were any intention to falsely implicate the appellant, Kushal Singh (PW-2) would have lodged the report against the appellant directly as the assailant of the deceased. The children of the appellant disclosed the name of the assailant during the investigation. The learned Sessions Judge has further observed that the appellant had four children who were to inherit his property on his death and so the contention was rightly rejected by the learned Sessions Judge.

20. In view of the foregoing discussion, it is evident that the evidence of the prosecution witnesses is cogent and credible and therefore the learned Sessions Judge was fully justified in coming to the conclusion that the charge against the appellant was established beyond doubt.

21. The appeal is dismissed. The conviction and sentence of the appellant as recorded per judgment and order dated 19.7.2000 under section 302 IPC are affirmed.

22. Let the record be sent back to the court concerned for necessary action and compliance report to be submitted within two months.

(J. C. S. Rawat, J.) **(Irshad Hussain, J.)**

Dated : September 15, 2004

Rawat